

## **REMARKS**

Applicant respectfully requests reconsideration and allowance of claims 1-26 that are pending in the above-identified patent application. Applicants have amended claims 7 and 20. No new matter has been added by way of these claim amendments.

Applicant acknowledges with appreciation that in numbered part 12 of the Office Action, the Examiner deemed claims 24-26 allowable.

At paragraph 3 of the Office Action, the Examiner rejected claims 7 and 20 under 35 U.S.C. § 112, second paragraph, as being indefinite. In particular, the Examiner objects to the phrase “a relatively high probability” as used in the subject claims as originally filed. Applicant has amended claims 7 and 20 to recite an indication that the “probability that the encrypted sub-band data may be broken exceeds a predetermined probability.” Applicant submits that this language is clear and definite and, therefore, submits that the § 112 rejection should be withdrawn.

In numbered parts 4-8 of the Office Action, the Examiner rejected claims 1-3, 6, 14-16, and 19 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,505,299 (“the ‘299 patent”). Applicant respectfully traverses the Examiner’s rejection. As an initial matter, Applicant submits that the ‘299 patent is not prior art under 35 U.S.C. § 102(b) to the instant application. Indeed, while the ‘299 patent may be prior art under another section of the U.S. Code, the instant application claims the benefit of U.S. Provisional application No.: 60/461,636, filed April 9, 2003. As such, the ‘299 patent publication date of January 7, 2003 does not pre-date the effective filing date of the instant application by more than one year.

Turning to the technical and legal merits of the Examiner’s application of the ‘299 patent to independent claims 1 and 14, such claims require, among other things:

encrypting at least one of the sub-bands using a key to produce encrypted sub-band data; and  
transmitting the encrypted sub-band data to a recipient separately from the other sub-bands.

Thus, it is noted that in accordance with the inventions of claims 1 and 14, the encrypted sub-

band data is transmitted separately from the other sub-band data. Applicant submits, however, that the '299 patent does not teach or suggest "transmitting the encrypted sub-band data to a recipient separately from the other sub-bands." We have reviewed the portions of the '299 patent cited by the Examiner and cannot find any disclosure or suggestion of separately transmitting the encrypted and non-encrypted sub-band data. Rather, at least columns 1-3 of the '299 patent seem to disclose the opposite, namely, that if any transmission of the encrypted data is performed, such data are sent together. If the Examiner is taking the position that the feature of separately transmitting the encrypted sub-band data from the other sub-bands is disclosed in the '299 patent, then Applicant respectfully requests clarification as to where such teaching is found – other than Applicant's disclosure. Absent such a showing, Applicants submit that the § 102(b) rejection of independent claims 1 and 14 (as well as the rejected dependent claims) should be withdrawn.

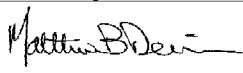
In numbered paragraphs 9-11, the Examiner rejected claims 4, 5, 17, and 18 under 35 U.S.C. §103(a) as being unpatentable over the '299 patent (discussed above). Given that the subject claims are dependent on independent claims 1 and 14, and such independent claims are believed to be patentable over the '299 patent as discussed above, Applicants submit that the § 103(a) rejection of claims 4, 5, 17, and 18 should be withdrawn.

In view of the foregoing, Applicants respectfully submit that the instant claims are in condition for allowance. Early and favorable action is earnestly solicited.

In the event there are any further fees due and owing in connection with this matter, please charge same to our Deposit Account No. 11-0223.

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Respectfully submitted,

By 

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